

ESTTA Tracking number: **ESTTA292733**

Filing date: **06/30/2009**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Petition for Cancellation

Notice is hereby given that the following party requests to cancel indicated registration.

Petitioner Information

Name	Purepecha Enterprises, Inc.		
Entity	Corporation	Citizenship	IL
Address	14032 S. Kostner Crestwood, IL 60445 UNITED STATES		

Attorney information	Hazel Espinar 515 N. State St., Suite 2330 Chicago, IL 60654 UNITED STATES Hazel@registerandprotect.com Phone:312-578-0907
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Registration Subject to Cancellation

Registration No	3526211	Registration date	11/04/2008
Registrant	EL MATADOR ADOBOS, L.L.C. 5813 GARDENDALE DRIVE HOUSTON, TX 77092 UNITED STATES		

Goods/Services Subject to Cancellation


Class 030. First Use: 1997/01/01 First Use In Commerce: 1997/01/01 All goods and services in the class are cancelled, namely: Marinades; non-fruit based sauces for beef, chicken and traditional Mexican foods
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Grounds for Cancellation

<i>Torres v. Cantine Torresella S.r.l.Fraud</i>	808 F.2d 46, 1 USPQ2d 1483 (Fed. Cir. 1986)
Priority and likelihood of confusion	Trademark Act section 2(d)

Mark Cited by Petitioner as Basis for Cancellation

U.S. Application No.	77691530	Application Date	03/16/2009
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	EL MATADOR		

Design Mark	
Description of Mark	The mark consists of a bull fighter silhouette arching backwards while gripping an elongated red cape behind him beneath the words "EL MATADOR" .
Goods/Services	Class 029. First use: pork rinds, sausage, cheese and sour cream Class 030. First use: First Use: 1999/06/00 First Use In Commerce: 2000/01/00 spices and seasonings
Attachments	Petition to cancel Matador.pdf (5 pages)(71636 bytes) 77691530#TMSN.jpeg (1 page)(bytes)

Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/Hazel Espinar/
Name	Hazel Espinar
Date	06/30/2009

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

<p>PUREPECHA ENTERPRISES, INC.</p> <p>Petitioner</p> <p>Vs.</p> <p>EL MATADOR ADOBOS, L.L.C</p> <p>Registrant</p>	<p>Registration No. 3526211</p> <p>Cancellation No.____</p>
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PETITION FOR CANCELLATION

Petitioner, PUREPECHA ENTERPRISES, INC. believes that it will be damaged if EL MATADOR ADOBOS, L.L.C continues to hold a trademark registration for the mark EL MATADOR ADOBOS EL MATADOR ADOBOS, L.L.C. SINCE 1997, Registration No. 3526211 and continues in existence and in full force and effect on the United States Trademark Register. Accordingly, Petitioner herewith petitions that the Trademark Trial and Appeal board cancel U.S. Registration No. 3526211 for the mark EL MATADOR ADOBOS EL MATADOR ADOBOS, L.L.C. SINCE 1997.

The grounds for the instant petition are as follows:

1. Petitioner has for many years used the mark EL MATADOR with design throughout the United States. The mark is imprinted on invoices, stationery, website, labels and a wide variety of other manners customary in the trade.
2. The use of the mark EL MATADOR with design commenced in intrastate since as early as 1999 and interstate commerce since at least as early as 2000.

3. According to the Registrant's application filing, the use of the word mark EL MATADOR ADOBOS EL MATADOR ADOBOS, L.L.C. SINCE 1997 commenced at least as early as 1997 in both U.S. interstate and intrastate commerce.
4. Carlos Rico Prado was the trademark applicant of the EL MATADOR ADOBOS EL MATADOR ADOBOS, L.L.C. SINCE 1997 mark and later assigned said mark to his Texas corporation, EL Matador Adobos, LLC. According to the mark itself, there was an existing legal entity or limited liability corporation entitled El Matador Adobos or some derivative therefrom since 1997. Yet, Registrant cannot show any such corporation existed at the time he first began to use the mark EL MATADOR ADOBOS EL MATADOR ADOBOS, L.L.C. SINCE 1997. The business entity did not exist as claimed in the mark on the records of any secretary of state's offices and this is yet another example of how Registrant continues to deceive the public and constitutes fraud on the U.S. Trademark Office.
5. The long and extensive prior use of the EL MATADOR with design by Petitioner is undisputed. Further, the EL MATADOR with design mark is well recognized in the grocery chain and food service industries.
6. Petitioner believes that Registrant's use of the mark EL MATADOR ADOBOS EL MATADOR ADOBOS, L.L.C. SINCE 1997 for the exact same goods, namely marinades or seasonings will create and is currently creating a likelihood of confusion in the marketplace, thereby damaging Petitioner, the original, sole and rightful owner of all title and interest in the EL MATADOR with design mark.
7. Petitioner believes that the EL MATADOR ADOBOS EL MATADOR ADOBOS, L.L.C. SINCE 1997 as used upon marinades and non based fruit sauces creates a false

association, sponsorship or approval by Petitioner and thereby damaging Petitioner, the original, sole and rightful owner of all title and interest in and to the EL MATADOR with design mark.

8. Petitioner believes that the EL MATADOR with design mark and Registrant's EL MATADOR ADOBOS EL MATADOR ADOBOS, L.L.C. SINCE 1997 mark as used in correlation upon class 030 for staple foods creates deception in the relevant marketplace, thereby damaging Petitioner.
9. Petitioner further believes that since as early as 2001 Registrant began to use the EL MATADOR ADOBOS EL MATADOR ADOBOS, L.L.C. SINCE 1997 mark without the authorization or control of the Petitioner. Registrant's statement within its trademark application that it was using the mark in interstate commerce since as early as 1997 and was the bona fide sole owner of the mark was entirely false and without any basis in fact. In fact, in 1999 Registrant ceased using the mark in intrastate commerce. Registrant's mark was not used in interstate commerce until 2001. Registrant's continued claims to this mark are false, misleading, fraudulent and deceptive. Such false statements and the like constitutes fraud on the Trademark Office, and therefore U.S. Reg. No. 3526211 must be cancelled.
10. The Petitioner's mark is well recognized as an upcoming and popular brand for spices and seasonings. Petitioner's mark is also well known in the spice and seasonings marketplace throughout the United States. Petitioner for a long period of years has extensively advertised and distributed, and caused to be distributed the EL MATADOR with design mark on its packaging, signage, ads and other methods commonly employed in the trade.

11. Accordingly, Petitioner views the EL MATADOR with design mark as highly valuable, and the mark is well and familiarly known, and the current registration of the EL MATADOR ADOBOS EL MATADOR ADOBOS, L.L.C. SINCE 1997 by Registrant working serious injury to the business of the Petitioner by misleading the public as to the origin and quality of the goods of Petitioner, by diminishing and impairing the rights of the Petitioner.
12. If the Registrant continues the usage of the mark EL MATADOR ADOBOS EL MATADOR ADOBOS, L.L.C. SINCE 1997 for class 030-marinades and sauces, this will deceive the public and its potential religious customers into believing that EL MATADOR ADOBOS EL MATADOR ADOBOS, L.L.C. SINCE 1997 are sponsored and approved by Petitioner, which they are not, and such deception and confusion will dilute the value, scope and effect of Petitioner's goals and purpose.
13. Registrant claims they have been using the EL MATADOR ADOBOS EL MATADOR ADOBOS, L.L.C. SINCE 1997 mark in interstate commerce for twelve consecutive years, which is a false statement. From 1997 through 1999, Registrant used the mark solely in California. In 2001, Registrant returned to the United States and began to use the mark in interstate. In 2000, Petitioner began to use the mark in interstate commerce. Falsifying the interstate date on the trademark application by Registrant further constitutes fraud on the Trademark Office and further reflects the lack of priority of Registrant's use of a same mark on the same goods, all of which requires that this Honorable Board issue an Order for Cancellation of the EL MATADOR ADOBOS EL MATADOR ADOBOS, L.L.C. SINCE 1997 mark from the United State Trademark Register.

WHEREFORE, for each and any of the above grounds, Petitioner respectfully moves that this Honorable TTAB expeditiously issue a Cancellation Order for the U.S. Trademark Registration No. 3526211.

Respectfully Submitted,

Hazel Espinar
Counsel for Petitioner

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